

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION
TO COMPEL DEFENDANTS' COMMUNICATIONS WITH THE DEA (Dkt. No. 269)**

Plaintiffs have filed a Motion to Compel Defendants' Communications with the DEA, seeking an order requiring Defendants to produce "all correspondence with DEA related to the approval or request for approval of Defendants' [suspicious order monitoring systems] from 1980 to present." Dkt. No. 269 at 5. Five months ago, Defendants offered to conduct a reasonable search for communications they had with DEA on the subject of suspicious order monitoring dating back to 1996, more than 20 years before Plaintiffs filed suit. Ex. 1 (Defendants' Submission re: Temporal Scope of Track 2 Discovery, Nov. 5, 2019). Plaintiffs did not need to file a motion to obtain that relief; they only needed to accept Defendants' offer.

Plaintiffs' motion now extends the time period for which these documents are requested all the way back to 1980. A request for documents stretching back 40 years makes no sense, even for this limited category of documents, and Plaintiffs have made no showing to justify a search reaching this far back in time. Notwithstanding that Plaintiffs made this request in an improper and needless motion to the Court, Defendants will conduct a reasonable search for and produce any communications with DEA related to the approval or request for approval of Defendants' SOM systems they are able to locate for that time period as well. Accordingly, Defendants respectfully suggest that Plaintiffs' Motion be denied as moot.

In agreeing to make this production, Defendants do not waive and expressly preserve all arguments that the appropriate time period for discovery in this litigation does not span 40 years.¹

Dated: April 9, 2020

Respectfully Submitted,

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¹ Plaintiffs have disclaimed past and future damages. They assert that they are seeking only prospective "abatement" of an ongoing nuisance. As set forth in Distributors' briefing on statute of limitations grounds, Dkt. No. 240, Plaintiffs may recover, whether damages or equitable relief, only for conduct occurring within the statutory period, or back to January 2016, at the latest. Evidence from 36 years prior to that relevant time period is not relevant to Plaintiffs' claims. It certainly is not relevant to Plaintiffs' ability to establish an ongoing nuisance in 2020, which they seek to "abate."

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 9th day of April, the foregoing **“DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL DEFENDANTS’ COMMUNICATIONS WITH THE DEA (Dkt. No. 269)”** was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Steven R. Ruby
Steven R. Ruby